

General Information Letter: Income from IRC Section 529 plans excluded from federal gross income is excluded from base income.

April 18, 2001

Dear:

This is in response to your letter of February 1, 2001 in which you request a private letter ruling. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (2 Ill. Adm. Code 1200). We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

In your letter you wrote:

I am writing to obtain a general information letter regarding Internal Revenue Code 529 college savings plan. My request in specific is based on a plan offered by xxxxxxxxxxxxxxxx known as the "CollegeBoundfund". This plan is administered through the Rhode Island Higher Education Assistance Authority. My questions are:

1. Do the earnings (Long and Short term capital gain, and income) of an IRC 529 plan administered by a state other than Illinois receive tax deferred treatment in Illinois while invested in the plan?
2. Upon withdrawal will the tax liability be to the contributors or the beneficiary?

I have enclosed plan materials supplied by xxxxxxxxxxxxxxxx for your review.

DISCUSSION

For income tax purposes Illinois generally follows the federal government in IRC §529 plans. The computation of individual base income for Illinois income tax purposes begins with §203(a) of the Illinois Income Tax Act (35 ILCS 5/101et. seq.). Base income equals federal adjusted gross income modified by several addition and subtraction factors. As earnings on §529 plans are excluded from income until distributed for federal tax purposes, they are excluded from base income unless a §203 modifier adds the contribution back. No such modifier exists so the earnings are tax deferred.

Similarly, no modification would exclude from base income any distribution included in federal adjusted gross income, with two exceptions. The Illinois Prepaid Tuition Program and income from the College Savings Pool are both designed to qualify as §529 plans. Chapter 86 Illinois Administrative Code §100.2470 (copy enclosed). However, both plans exempt *distributions* from Illinois income taxation by virtue of the statutes that created the plans. (See §100.2470). Thus the subtraction modifier at §203 (a)(2)(N) removes the distribution from adjusted gross income as found on line 33 of the federal 1040. In all other respects Illinois administers §529 plans according to federal rules, regardless of the state which administers them.

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As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles E. Matoesian

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